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AN
ARGUMENT
FOR
Self-Defence,

Written about the Year 1687,
Never before Published,
And now offer'd to the
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OF THE
GENTLEMEN
OF THE
Middle-Temple.

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АРГУМЕНТ
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Self-Defense

Written in New York 1885

Next before Published

At the Office of the

CONSIDERATION

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GENTLEMEN

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MEMBERS.

Written in New York 1885

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ARGUMENT

FOR

SELF-DEFENCE, &c.

Gentlemen,

YOU are Busy at present enquiring whether any manner of Resistance to the Supream Magistrate is Lawful, which will Excuse me in Publishing the Remains of a Manuscript Discourse of a Worthy Person Deceas'd; but be that as it will, you have it as I find it; only Pardon the Publisher, if where the Copy is torn or defac'd he leaves you in the Dark to question the Author's Meaning.

An Argument for Self-defence.

THIS is a Fundamental Law of Nature, and Universal Rule of Justice, that Man should be free from Injuries and Violence. This Freedom extends not only to his Life and Limbs, but to his Possessions also, which are a Part of him, and so necessary to him, that take away those and you Rob him, if not of Life itself, at least of those Enjoyments which make it Considerable or Desirable. But so deprav'd is Humane Nature, and so apt are Avarice and Ambition to make Men forget the Obligations they lye under to one another,

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that 'tis to little Purpose he has a Right to this Freedom, unless he has it in his Power to Preserve it, and Punish the Infringers of it. God has therefore made it the Duty and Priviledge of every Man to defend himself from Unjust Force, and to take Reparation for the Injury done him. *

This, before the Forms of Government were fix'd in the World, or Laws invented to be the Rule of Life, before Justice was distributed by one common Person, to whom all might Appeal for Redress, could be no otherwise than every one judging of the Danger or Injury, and opposing Force to Force, to Prevent the one, or Repair the other. Such a State of Equality I call a State of Nature, which had abundance of Inconveniencies : For Self-love is apt to make us Partial where we are allow'd to be Judges in our own Case ; and if the Sentence shall happen to be Equitable, perhaps the Injur'd Party is too Weak to Resist his Oppressor, so that the Innocent may often Suffer ; or if a Man be in some Measure guilty, be Punish'd beyond the Nature of his Crime, and the Mighty Triumph in Impunity : It was therefore necessary to fix on some Standing Rules, which should be the Measure of Right and Wrong between Man and Man :

These we call Laws ; hence we see that

Laws were ordained by the General Consent, and for the Publick Good, which are so far from infringing Natural Liberty, that they are the only Means to enlarge and preserve it ; for Liberty is to be free from Violence and Oppression. But, † Laws

* Dr. and Student, Cap. 2. of the Law of Nature.

† Sanderson de obligatione Conscientiæ, 103. Leges nullæ alia ex causa nos tenent quam quod judicio populi receptæ sunt. Idem p. 132. Civilis autem regiminis eiusq; quæ ipsi debita Obedientia finis est humanæ Societatis salus & tranquilitas. Cicero de leg. l. 2. Constat profecto ad salutem civium civitatumq; in columitatem vitamq; hominum quietam & beatam inventas esse leges. Ex quo intelligi par est eos qui perniciosa & injusta iussa populis de scrip-erint cum contra fecerint quam polliciti professi q; sint quidvis tuis tulisse quam leges.

Laws being for the better governing Humane Societies are to no Purpose, unless duly executed, which made it necessary that there should be some Person or Persons with sufficient Authority to that End ; and this could not be but by entering into Societies, in which every Individual gave up his Natural Right of judging for himself, and of using Force to Defend his Person and Goods, and consented to submit to the Decision of the Laws, and common Justice, administered by One or more Persons appointed for that End by the Whole, and for the same End arm'd with the Force of the whole Society. And hence came Political Power to be vested in the Magistrate, who is Supream to a Particular Purpose, *viz.* The Publick Good, by putting the Laws, which are the Publick Voice, in Execution. *

People then entering into Society, the better to be preserved in their Lives and Properties, must be subject to the Laws of the Society by which they are protected: And hence it is that it is not lawful for any one under Civil Government to take upon him to judge for himself, or to do himself Justice on the Offender, because there are known Laws and equal Judges, to which he may Appeal. Now this Disability, or rather Right of Appeal, being introduc'd for the Good of

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every

* Fortescue de laudibus leg. Angliae, Cap. 13, & 14. Le Mirror, Cap. 1. S. 2. They (that is, the Saxons in England) after great Wars and Troubles which they had been under a long time, chose 'em a King to Reign over them, or to Govern the People of God, and to Preserve their Persons and Goods by the Rules of Justice. And, Cap. 5. S. 1. The principal Abuse is that the King is oustre le ley, whereas he ought to be subject to it, as is said in his Oath. Cicero de leg. I. 3. Magistratis hanc esse vim ut praesit praescribatq; recta utilia & conjuncta cum legibus, ut enim Magistratibus leges ita populo praelunt Magistratus. — Du. Hamele Tract. de Philosophia Moral. Dissert. de Justitia. — Deinde ne imbecilliores præde essent validioribus, quam quisq; habuiz vindicandi facultatem in multitudinem aut potius in eum qui præsul transtulit, uti ille præderet ne cuiusq; jus violaretur.

every individual, and by universal Consent, shall never be extended to the Prejudice of any one, when he can't have the Advantage is design'd him by it. And therefore,

Every one under Civil Gov——t may do what would have been Lawful for him in a State of Nature, in such Cases where he can't have the Benefit of an Appeal to the Laws of the Commonwealth he is under. By a State of Nature, I mean such a State of Equality where there is no Superior Power on Earth, to which a Man on any Injury Receiv'd or Threaten'd may have Recourse for Relief; and therefore where Two Men are without this common Judge, they are with respect to one another in a State of Nature. Now let it be observ'd, that tho' I am in a Country where there are Laws and Judges, yet if I am by Violence put out of a Capacity of taking the Benefit of 'em, it is the same to me as if there were none at all. As for Instance,

The Law says, That whosoever Kills another with Malice, without Provocation, willingly, is guilty of Murder, and shall Die for it; the same Law for very good Reasons says further, That the Murderer shall be put to Death according to Law, in a Manner, and by Persons appointed by it, and that if any one do it otherwise he too is guilty of Murder: Certainly this is better than the State of Nature Punishments, which give Way too much to Malice and Revenge. But if a Villain puts a Dagger to my Throat, or Assaults me in so violent a manner that flying would inevitably be my Death, in this Case I am excus'd in killing him in my own Defence; for I can't appeal to the Law, my Life is in extream Danger, and the Injury design'd is irreparable; I am therefore call'd down to the Exercise of an Ancient Power, which I parted with on no other Terms but for my better Preservation.

Civil Laws then never did wholly take away the Right of Self-defence between Equals, which God and Nature have intrusted every Man with. I say Equals, for I am coming to that Self-defence which respects the Supreme Magistrate.

And now by Self-defence I would not be thought to mean a bare running from the Stroke, avoiding the Blow, but doing whatsoever is necessary to Preserve my own Life or Property from Unlawful Violence. This every one knows when we Talk of giving back to the Wall, and then drawing on the Assailant; now as far as a Man can go with Safety is to the Wall, and if the Assault be so violent that 'tis dangerous to retire, I am at the Wall already: In short, I mean

The State of Nature is a State of perfect Equality, none claiming Dominion over another, and so is opposed to a State of Laws; from whence it follows, that no Body has a Right to a Political Power over another, but as he is a Member of Civil Society, and so Subject to, and protected by, the Laws of it, the due Execution of which this Superior is intrusted with for good of the whole, and as far as is consistent with that the Preservation of every Individual. *

Now if a Magistrate be Supreme only by Virtue of the Laws, (which are the only standing Voice of the Country,) it will be difficult to say that he

Society,) it will follow that in all Cafes where the
A 4 Laws

1197 * Fortescue de Laud. Leg. c. 13. ad Tutelam namq; legis subdilectorum ac eorum corporum & bonorum. Rex hujusmodi erectus est & ad hoc, potestatem a populo effluxam ipse habet; quo ei non licet potestate aliâ suo populo dominari.

Laws don't interpose, he is a Private Man, and we are Equal. To apply this to an Instance like the former: The Prince without any Cause Assaults me in so violent a manner that 'tis impossible for me to defend my Life without returning the same Violence; what shall I do? I can have no Benefit of those good Laws which he is to Execute, or that equal Justice he is to distribute, and for that End only is put above me, (for it cann't be to my Prejudice,) if therefore these don't interpose to save me from Unlawful Violence, which was the sole End of 'em, 'tis Absurd to imagine they shall to my inevitable Destruction, which they would, did they make it Treason or Rebellion, Unlawful to Resist him in this Case; and where the Laws don't interpose, we are Equal.

Being Equal then, and he the Aggressor, if I cann't otherwise save my own Life than by taking away his,

it may be said perhaps, No, you must not Kill him, for his Death would be a Publick Loss, and therefore far beyond any Injury he can offer a single Person. For this Time I'll say, that if he so far abandons himself to all that is bad, as to Kill a Subject (who certainly was not Born for his Diversion) in cold Blood, there will be no great Loss to the Publick in his Death. But it seems this is not the Case, the Prince must not be suppos'd so Barbarous as to attempt to Murder a Man; yet since he is but a Man of like InfirmitieS, and one that is told he ought to Act without Controul, and that but to question his Proceedings is little less than Blasphemy, (a Learned King's Words,) we must allow 'tis possible. However,

There are other Instances in which 'tis possible for a King to betray his Trust, endeavouring to sub-

* Here seems to be some Lines wanting.

extirpate the Laws and Liberties of his People, by assuming and exercising a Power of dispensing with the Laws he is to govern by, and making use of the Force of the Community, in Standing Armies, against the Liberty of the Subject, to back his own Arbitrary Proceedings; and if this happens to be the Case, how much more justifiable is Resistance in the whole Body of the People, so as to preserve themselves from Ruin, than in one Single Person, whose particular Wrongs may never affect the whole? *

Nobody doubts but the General Good is to be prefer'd by the Publick to any Private Man's Advantage; and therefore more Caution us'd to prevent Publick Calamities than Private Injuries. It follows then, that if it be lawful for a single Man to resist unlawful Force with Force, when his Life is in Danger, 'tis much more so for the whole Body, or the Majority of the People, when their Laws are Cancel'd, or in apparent Danger of it; and consequently their Estates, Lives, Liberties, and all that is Valuable in this World, subjected to the Arbitrary Decrees of one Person, arm'd with the Force of the Society, and generally supported by all the Arts of Learning and Religion. But the better to set out the Heinousness of his Crime, and the mighty Danger of such Practices, 'tis best to take a Survey of the Benefits Men receive from Good Laws, and the Misery that would follow on a Dissolution of 'em.

And now methinks there should be no Difficulty in convincing the unprejudic'd, that for this very Inconvenience, *viz.* the want of Law, Mankind weary of the State of Nature, wherethe Weak were in continual Danger of the Strong; he still insulting the Weak,

* If the Author had been so Happy as to have liv'd to the Revolution, he would have seen this in other Words, in the *Claim of Rights*, 1 W. and M. 2. J. s. 2.

Weak, in Danger himself of a stronger Neighbour, quickly came into Societies, and were content to be subject to the Laws by which they were protected. * And if this be the End of Law, he that destroys those brings us back again to a State of Nature, with this only Difference, that whereas then Men were in Danger of one another, but not without Hopes of Remedy, since 'twas the Duty and Interest of every one to assist the injur'd Party against his Oppressor, now they are all Subject to one Man, who, according to the Doctrine of unlimited Passive Obedience, is to act without Restraint, whatever Mischief he may design. But to be better satisfied, that the Happiness of one People becomes the Envy of their Neighbours; from this Difference, that one has good Laws duly executed, the other none at all, or at least subject to the Prince's Pleasure; why are we here in England in a better Condition than the Subjects of France, or Denmark? I'm sure we think our selves so, and are apt to be proud of it, * and our English Liberty; if any one is of another Mind, it is a Thousand Pities he had not his Heart's Desire; and a Pair of Wooden Shoes there. We here enjoy the Fruits of our Honest Industry, every one under his Vine and Fig-tree, Sollicitous for nothing but the Happiness of Her that derives these Blessings on us. In short, if Peace and Quietness be the Effect of good Laws, and a just Temperament of Power; if Success Abroad, and Liberty at Home, be owing to a Happy Administration; what dismal Consequences has he to answer for, that by destroying all Order and Rule does what in him lies to let loose the Reverse of all these Blessings on a Nation, over which he was set for their Good. Merito bene-

* Fort. de Laud. Leg. c. 4. Non alio pacto gentilium proprio Arbitrio unquam se in Regum Corporavit nisi ut per hoc se & sua quorum dispendia fomidabat tutius quamantes possiderent.

* Fortescue, cap. 35, & 36. *The Comparison.*

beneficium legis amittit qui legum ipsum subvertere intendit.

Obj. To this 'twill be objected, that indeed all these Advantages you have been talking of are owing to a good Gov——t, and great is that Prince's Crime that endeavours to rob you of 'em; but for it he is accountable to none but God; and that the Subject ought rather to endure all this, and more, than disobey God's Command, Resist not.

I suppose they mean that the Magistrate is Supream on Earth, and therefore accountable to none but God. In Answer to this, I beg leave to say, where a Power is given to any Man with a Trust to the attaining any End, if that End be not pursu'd, and so the Trust broken, the Power ceases; therefore if the Supream Power was lodg'd in the Magistrate, in order to the well-governing the People committed to his Charge, if that End be not answer'd, but, on the contrary, the People are made a Prey to his unbounded Dominion, their Lives and Fortunes depending on his Caprice and Humour, his Power thus abus'd ceases, and he becomes a Private Man; and resisting him (which here is but Self-defence) can never be resisting the Ordinance of God, since that is resisting the Power, not the Person, in the abuse of it. *

* 'Twould be little less than Blasphemy to say that God ever set one Man over Millions for their Destruction; or that in this Sense Power is the Ordinance of God, it must be then for their Good. Indeed, for the Sins of a People he has suffer'd a prevailing Con-

queror

• Bostesue de Laud. c. 14. Et ad hoc gravius multo populus talis aedetur si deinde Peregrini legibus etiam ipsis forsan exosis Regeretur. Et maxime si legibus illis, (or any other Way the following Reason holds Good,) innovaretur Substantia proprius vitanda jactura ut pro suorum tutela corporum ipsi se Regis imperio, proprio Arbitrio, submisserunt; non potuit revera potestas hujusmodi ab ipsis erupisse, & Tamen si non ab ipsis Rex hujusmodi super ipsos nullam obtineret potestatem.

queror to carry 'em Captive, or to oppress 'em in their own County; thus he Sold his People, the *Israeliets*, into the Hands of *Chusonrishathaim*, and of *Jabin*; he strengthen'd *Eglon* against 'em, deliver'd 'em into the Hands of *Midian*; but still left a Right in 'em to use all the Means they were able to get out of their Bondage, which because they could not be effectual without his Concurrence, (as no Humane Endeavours can.) he is said to deliver 'em again, but 'twas still in a Way of Resistance, *Judges* 3, 4, 6. *2 Kings* 18. v. 7. *And the Lord was with him, and he prospered wheresoever he went forth; and he rebelled against the King of Assyria, and serv'd him not.*

Obj. But 'twill be further objected, that tho' the Magistrate exceed the Bounds of his Commission, and that in those Instances he cann't be said to act by it, and so not Supream, yet in other Cases he is Supream still, and therefore in no wise to be resisted, since any Resistance will affect his whole Power.

To this I say, that if it be true, then Resistance in the first Case, where the Magistrate puts a Dagger to my Breast, would be unlawful; for that would effectually divest him of his whole Power: Besides, let it be observ'd, that the Lawfulness of Resistance is laid down only on a Supposition that the Laws are Cancell'd, and the Course of Justice hinder'd by Force; and if that happens, I see no Reason why the Prince shall destroy one part of the Laws that relate to the Subjects Liberty, &c. and take Advantage of another Part which makes him Supream, when he is Supream only the better to Preserve the Subjects Liberty, by putting the Beneficial Laws in Execution.

I confess I have in this Argument made use of a Supposition, that there was once a Time when there was no Government in the World, and that Men chose themselves Governours, and came out of the State of Nature, the better to live together, and preserve their Lives

Lives and Properties. Indeed, I know no great Necessity of this Hypothesis, for whencesoever Power be deriv'd, be it from the Consent of Men, or God's Appointment, it must be for the Publick Good, which being the End of it, whoever, let him come by it as you please, abuses it to another and contrary End, forfeits it. As for God's Designation, if it be lawful to resist a Tyrant that was set over a People for a Scourge to 'em, and that was the Sole End of his Promotion ; (as by the Places cited out of the Scripture it appears it was,) it is much more so when the Magistrate was appointed for the Good only of the People, and abuses the Power he has to their Destruction. And no other End can God have in setting one above another, but either to execute his Vengeance on a Sinful People, or to dispence Judgment and Justice in the World. However, the Supposition of a State of Nature, and of the Original of Gov—t, by the Consent of the Individuals, will not appear so unreasonable if we consider that there has never been any other Satisfactory Account given of the Beginnings of lawful Monarchies, (for I meddle not with Conquest and Usurpation;) and unless the first Man was immediately Monarch of the Universe, which will never be made appear, there must have been a Time when there was no Civil Government in the World, and Men were at liberty to fix on what Form they pleased. I know I ought not to cite any more Authorities ; but I can't pass by Cicero de Off. l. 2. *Mibi quidem non solum apud Medos sed apud Majores nostrus justitia fruenda causa videntur, olim bene Reges Morati Constituti. Nam cum premeretur inops Multitudo ab iis qui Majores opes habebant, ad virum aliquem Confugiebant, Virtute prestantem, qui cum prohiberet injuriā tenuiores aequitate Constituenda summos cum insimis pari jure retinebant. Eademq; Constituendum, legum fuit causa quæ Regum, ius*

enim semper quæsitum est æquabile aliter non est jus.
Si ab uno justo & bono viro Consequebantur eo erant
Contenti, cum id Minus Contigerit Leges sunt invicta
que cum omnibus semper una atq; eadem voce Loque-
centur. Ergo hoc quidem perspicuum est eos ad im-
perandum diligi solitos quorum de justitia magna est
Opinio Multitudinis. I make no Remarks on this
Passage, the Reader will be perswaded there needs
none. *

Obj. To what has been offer'd for Resistance 'tis
urg'd, that it opens a Way to Rebellion and Con-
fession; and that 'tis better to suffer the greatest Ty-
ranny than run into a Civil War.

To this I say, admitting my Doctrine be true, I
am not to answer for the Consequences of it, which
will not be very Fatal, if we consider that there is
no Hazard in a Resistance, unless the Majority at least
be sensible of the Danger they are in, and then no
Matter how soon 'tis prevented. It cann't be said that
by this Doctrine if any one thinks himself abus'd he
will take upon himself to resist; perhaps he has a
Right to it; but there is no Danger that he will,
unless he be Mad, and desires to be Hang'd. And for
the other Objection, that 'twill be a Means of Blood-
shed, that will hold altogether as well if a Ruffian
assaults me in the Highway, or at least in the Case
of a Foreign Invasion; yet there 'tis thought better to
oppose Force to Force, than bear all the Conqueror
can inflict. Now the Peoples Condition of Slavery
is

* This is strengthen'd by a late Discourse of a Reverend Prelate
of our C——b, I mean the Bishop of Exeter's Accession Sermon of
1705. The Designation and Appointment of particular Persons
to the Administration of the Gov——t, this is Humane,
and the Distribution of the Power of Gov——t into one, or more,
Heads, this likewise is Humane, this is the Ordinance of Man only;
which could not be unless People were at liberty to fix on what Form
they pleased, and consequently there had been a Time in which no Form
was fixed on, which I always called a State of Nature.

is the same, whether they are subject to the Tyranny of a Foreigner, or their own Sovereign; with this only Difference, the first is under no Obligation to 'em, has broke no Trust, as the other has. But if all the Fear be of a Civil War, and Outrages one among another, it may as well be said an Usurper must not be opposed if assisted by our own Countrymen only, for that might occasion Bloodshed and Outrages one among another.

I hope Nobody will think this Argument sufficiently answer'd by producing the Homilies of our Church, or the *Oxford Decree* against it; for I must beg him to grant me, that Nobody, of Men, however Learned or Impartial in their Search of Truth, are Infallible; and therefore their bare asserting a Thing shall never establish it for a Truth never to be disputed. Besides, till I see the Practice of the Church and University agreeable to those Rules I shall not take much Pains to reconcile my Doctrine to 'em.

P. S. It may seem unseasonable in me to publish a Discourse of this Nature, at a Time when the Matter in Debate has receiv'd the most Solemn Determination We, of this Nation, ever knew; but I know People will not acquiesce in Solemn Resolutions, nor do I desire they should any farther than as Rules of Peace; but I hope those Gentlemen who will not allow a Parliament to judge for 'em in Matters of Civil Concern, will never trouble us again with General Councils, or the Power of the Church, to decree Rites and Ceremonies, and its Authority, in Controversies of Faith.